IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Takhat Singh & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.591/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 18-8-2001 in Sessions Case No.23/2001 passed by Shri Prabodh Vasistha, RHJS, Additional Sessions Judge (Fast Track) No.1, Kota.

Date of Judgment: March 23, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Sanjay Mehrishi, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In the flowing darkness of night Chauth Mal was mercilessly killed. Girraj Prasad, son of Chauth Mal, who at the trial was examined as eye witness of the occurrence gave graphic details of the incident. Placing reliance on the sole testimony of Girraj Prasad, learned trial Judge convicted and sentenced Takhat Singh, Narendra Singh @ Nehru Singh, Bhanwar Singh, Bapu Singh and Rameshwar, appellants herein, as under:-

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine Rs.1000, in default to further suffer seven days imprisonment.

U/s.447 IPC:

Each to suffer rigorous imprisonment for one month.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year.

Bapu Singh:

U/s.302 IPC:

To suffer imprisonment for life and fine Rs.1000, in default to further suffer seven days imprisonment.

U/s.447 IPC:

To suffer rigorous imprisonment for one month.

U/s.148 IPC:

To suffer rigorous imprisonment for one year.

Rameshwar:

U/s.302/149 IPC:

To suffer imprisonment for life and fine Rs.1000, in default to further suffer seven days imprisonment.

U/s.447 IPC:

To suffer rigorous imprisonment for one month.

U/s.147 IPC:

To suffer rigorous imprisonment for one year.

Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that Girraj Prasad (Pw.1) lodged written report (Ex.P-1) on June 6, 1996 at Police Station Bapawar Kalan to the effect that in the preceding night around 12-1 AM while the informant and his father Chauth Mal were sleeping near the well of their field, the informant woke up on hearing cries of his father and saw Bhanwar Singh armed with gun and sword, Takhat Singh had sword, Nehru Singh had Kutia, Bapu Singh had Gandasi and Rameshwar was having lathi. All of them were inflicting injuries on the person of his father. When the informant made attempt to intervene, he was threatened and forced to run for his life. The informant reached to the village and informed about the incident to the

villagers who went to the place of occurrence and found Chauth Mal dead. On that report case was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Kota. Charges under sections 447, 147, 148, 302, 302/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 29 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated herein above.

4. We have heard the rival submissions and scanned the material on record.

5. Death of Chauth Mal was homicidal in nature. As per Post Mortem Report (Ex.P-17) following ante mortem injuries were found on the dead body:-

1. Incised wound 2” x 1” x bone deep over right forehead below hair line with fracture of frontal bone with brain tissue coming out.
2. Incised wound 2” x ½” x bone deep over right parietal region and fracture of Rt. parietal bone with brain tissue coming out.
3. Incised wound 1” cut through ear.
4. Bruise with swelling 2” x 2” over right cheek with blacking of bone eyes.
5. Lacerated wound 1” x ½” x ½” over left lower leg with fracture of both bones.
6. Bruise 3” x 1½” over right hip joint with fracture dislocation of hip joint.
7. Bruise 3” x 1” over right thigh.
8. Bruise 4” x 1½” over mid of right thigh.
9. Bruise 4” x 1½” over lower part of right thigh.
10. Bruise with abrasion 2” x 1” over ankle joint Rt. With fracture

of ankle joint.
11. Bruise (i) 4” x 1” over Rt. supra scapular region.
(ii) 5” x 1” over mid scapular region Rt.
(iii) 3” x 2” over Rt. infra scapular region.
12. Bruise (i) 3” x 1½” over left sufra scapular region
(ii) 2” x 1½” over mid scapular region.
(iii) 3” x 1½” Infra scapular region.
13. Bruise 4” x 2” over lumber vertebra column
14. Bruise 2” x 1” over left knee joint
15. Bruise 3” x 2” over lower 1/3rd Rt. upper arm.
16. Bruise 3½” x 1½” over middle part upper arm.

Dr. L.N.Meena (Pw.20), who conducted autopsy on the dead body, deposed that the cause of death was coma due to head injury.

6. Since super structure of prosecution case is founded on the sole testimony of informant Girraj Prasad (Pw.1), we deem it appropriate to address ourselves on the issue as to in what manner the testimony of single witness can be considered.

7. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof or disproof of a fact. Section 134 follows the maxim that evidence is to be weighed and not counted. Law does not insist on plurality of evidence. It is the quality of the witness which is significant in appraisal of evidence. So long as the single eye witness is wholly reliable witness, the Court has no difficulty in basing conviction on his testimony alone. In Anil Phukan Vs. State of Assam (AIR 1993 SC 1462) it was indicated that it is only when the courts find that the single eye witness is wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.

8. The evidence of the sole eye witness has to be scrutinised with caution and circumspection. Conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not taken by any adverse circumstance appearing on the record against him and the court at the same time is convinced that he is a truthful witness.

9. Bearing these principles in mind, we proceed to scan the testimony of Girraj Prasad (Pw.1). In his deposition Girraj Prasad stated that on June 5, 1996 around 8 PM he accompanied his father to their well in order to watch the crop and to work at furnace of bricks. After working for two hours his father told him to relax and he slept inside the boundary of vegetables farm whereas his father slept on the other side in a field. Around 1 AM he heard the cries of his father. He stood up and saw Bhanwar Singh armed with gun and sword. Nehru @ Narendra was having Kutia, Takhat Singh was armed with sword, Bapu Singh had Gandasi and Rameshwar had lathi. They all were inflicting injuries on the person of his father. On being asked by him as to why they were beating his father, Takhat Singh exhorted all to kill him (Girraj Prasad) also. He then rushed towards the village. The assailants followed him but could not catch him. He gathered the villagers and went back to the spot where he found his father dead. In the cross examination Girraj Prasad stated thus:-

> "उस दिन बिजली बंद थी या चालू थी मैं नहीं कह सकता। खंभे पर बिजली का बल्ब लगा हुआ नहीं था।..."
>
> "मैं खेत के अन्दर सो रहा था पिताजी कोट के बाहर सो रहे थे।"
>
> "मैंने 15-16 फीट दूर से मारपीट देखी थी वहां से मैं अपने पिता की और आगे

नहीं बढा था..."

" मुलजिम मेरे पीछे पडे तो मैं गांव भाग गया था।"

"पिताजी को लेकर सीधे थाने ही गये। वहां पर थानेदार साहब मिले। चार-साढे चार बजे थाने पहुंचे थे। थानेदार उसी समय अपने आप आ ही गये थे।"

"... मैंने स्वयं ने लिखित रिपोर्ट पेश की थी। थानेदार से कागज पेन लेकर मैंने खुद ने वहीं रिपार्ट लिखकर दी थी।"

10. A close look at the testimony of Girraj Prasad reveals following fact situation:-

(i) There was no source of light at the place of incident.

(ii) Even in the darkness Girraj Prasad identified all the assailants and he gave graphic details of the incident.

(iii) The assailants although followed Girraj Prasad could not catch him.

(iv) Girraj Prasad was left alive by the assailants to enable him to give evidence against them.

11. The Evidence Act does not purport to lay down any rule as to the weight to be attached to the evidence when admitted, nor is any such rule possible for proper appreciation of evidence is a matter of experience, common sense and knowledge of human affairs. BIRCH J. in R vs. Madhub (21 WR Cr.13) indicated thus:-

> “For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and common sense and shrewdness must be brought to bear upon the facts elicited in every case which a judge of facts in this

country discharging the functions of a jury in England, has to weigh and decide."

12. Although efforts have been made by mathematical writers to formulate rules for determining moral certainty it is obvious that no satisfactory system can be devised for weighing evidence and drawing conclusions. In Ram Chandra Vs. Champa Bai (AIR 1965 SC 354) the Apex Court held that in order to judge the credibility of witnesses the court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses but it is open to it to look into the surrounding circumstances as well as the probabilities.

13. In the case on hand, as already noticed, the written report was handed to the SHO at 4.30 AM. However a perusal of the record demonstrates that no endorsement was made by the SHO on the original report as to at what time it was handed over to him. Radhey Shyam Gupta, DYSP (Pw.27), who had control over Police Station Bapawar Kalan, deposed that Raju Singh SHO to whom written report was handed over, was himself an accused in a case registered under section 302 IPC at Police Station Gangdhar District Jhalawar. The prosecution has failed to examine Raju Singh SHO to establish this fact as to at what time written report was handed over by Girraj Prasad. Tej Singh (Dw.1), who possessed agricultural land adjacent to the land of deceased deposed that:-

"6.6.96 की रात को गिरिराज हॉका कर रहा था कि मेरे पिताजी को पता नहीं कौन मार गया।"

14. On testing the evidence of Girraj Prasad in view of surrounding

circumstances as well as the probabilities and from the point of view of trustworthiness we find him highly unreliable. It is difficult to believe that in the darkness he was in a position to identify the assailants. It is highly unlikely that the assailants even after seeing him at the spot had spared him to enable him to testify against them. It appears to us that it was a blind murder and Girraj Prasad being the son of the deceased was introduced as eye witness of the occurrence. We discard the testimony of Girraj Prasad and grant benefit of doubt to the appellants.

15. For these reasons, we allow the appeal and set aside the impugned judgment dated August 18, 2001 of Additional Sessions Judge (Fast Track) No.1 Kota and acquit the appellants of the charges under sections 447, 147, 148, 302 and 302/149 IPC. The appellants Takhat Singh, Narendra Singh @ Nehru Singh, Bhanwar Singh and Rameshwar are on bail, they need not surrender and their bail bonds stand discharged. The appellant Bapu Singh, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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